

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
RAPHAEL M. PANTOJA,  
:  
RACHEL M. PANTOJA, and  
:  
RAFAEL M. PANTOJA  
:

Plaintiffs,

-v-

JAVIER ENCISO & HERMAN QUAY,

Defendants.  
:  
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18 Civ. 11842 (PAE) (GWG)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

On December 17, 2018, *pro se* plaintiffs Raphael M. Pantoja, Rachel M. Pantoja, and Rafael M. Pantoja brought this action asserting claims arising out of Rafael's incarceration at the Metropolitan Detention Center, Brooklyn, and Rachel's interactions with defendant probation officer Javier Enciso. Currently pending is defendants' motion to dismiss plaintiffs' claims under Rules 12(b)(1), 12(b)(3), and 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative, for summary judgment pursuant to Federal Rule of Civil Procedure 56. Dkt. 32. Before the Court is the December 10, 2019 Report and Recommendation of the Hon. Gabriel W. Gorenstein, United States Magistrate Judge, recommending that the Court grant defendants' motion. Dkt. 60 ("Report"). The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts this recommendation.

**DISCUSSION**

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection

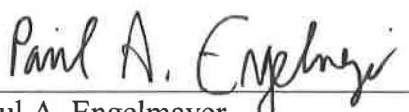
has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at \*2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at \*4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Gorenstein’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that “failure to object within fourteen (14) days will result in a waiver of objections and will preclude appellate review,” Report at 16, the parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

### CONCLUSION

For the foregoing reasons, the Court grants defendants’ motion to dismiss or, in the alternative, for summary judgment. The Clerk of Court is respectfully directed to mail a copy of this decision to plaintiffs at the addresses on file, to terminate the motion pending at docket 32, and to close this case.

SO ORDERED.

  
Paul A. Engelmayer  
United States District Judge

Dated: January 6, 2020  
New York, New York